

AMENDED IN ASSEMBLY AUGUST 27, 2009

AMENDED IN ASSEMBLY JUNE 8, 2009

AMENDED IN SENATE APRIL 20, 2009

AMENDED IN SENATE APRIL 13, 2009

SENATE BILL

No. 204

Introduced by Senators Benoit, Huff, and Runner
(Coauthor: Assembly Member Hagman)

February 23, 2009

An act to amend ~~Sections 17405 and~~ *Section* 17600 of, and to amend and repeal Section 17207 of, the Financial Code, relating to financial transactions.

LEGISLATIVE COUNSEL'S DIGEST

SB 204, as amended, Benoit. Financial transactions: escrow agents.

Existing law provides for the licensing and regulation of escrow agents by the Commissioner of Corporations. Existing law, until January 1, 2010, requires each escrow agent to pay an annual license fee of up to \$2,800 for each office or location and authorizes the commissioner to additionally levy a special assessment of up to \$500, which is required to be paid by the escrow agent within 30 days of receipt of notification by the commissioner, for each office or location in certain circumstances. Commencing January 1, 2010, existing law instead requires each escrow agent to pay to the commissioner the agent's pro rata share of the commissioner's annual administrative costs and expenses, as specified.

This bill would repeal the provisions that would require an escrow agent, commencing January 1, 2010, to pay to the commissioner the agent's pro rata share of the commissioner's annual administrative costs and expenses. The bill would, instead, continue the requirement for an

escrow agent to pay an annual license fee of up to \$2,800 for each office or location. The bill would authorize the special assessment that may be levied by the commissioner to be in an amount of up to \$1,000 for each office or location. The bill would require an escrow agent to pay the special assessment within 60 days of notification by the commissioner.

~~Existing law authorizes the commissioner to conduct examinations, as specified, of a new licensee within one year and within 2 years of the issuance of a license.~~

~~This bill would require the commissioner to conduct the examinations, as specified, of new licensees or upon change of ownership.~~

Existing law provides that the license of an escrow agent remains in effect until surrendered, revoked, or suspended. Existing law sets forth the procedure for the surrender of the license of an escrow agent, and requires a surrendering licensee to, among other things, tender his or her license and all other indicia of licensure to the commissioner, and submit a closing audit to the commissioner, as specified. Existing law provides that a license is not surrendered until the commissioner has reviewed and accepted the closing audit, made a determination that there is no violation of law, and, in writing, accepted tender of the license.

This bill would delete the requirement that the commissioner make a determination that there is no violation of law and instead require a determination that acceptance of the surrender is in the public interest.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 17207 of the Financial Code, as amended
- 2 by Section 1 of Chapter 257 of the Statutes of 2005, is amended
- 3 to read:
- 4 17207. The commissioner shall charge and collect the following
- 5 fees and assessments:
- 6 (a) For filing an application for an escrow agent's license, six
- 7 hundred twenty-five dollars (\$625) for the first office or location
- 8 and four hundred twenty-five dollars (\$425) for each additional
- 9 office or location.
- 10 (b) For filing an application for a duplicate of an escrow agent's
- 11 license lost, stolen, or destroyed, or for replacement, upon a

1 satisfactory showing of the loss, theft, destruction, or surrender of
2 certificate for replacement, two dollars (\$2).

3 (c) For investigation services in connection with each
4 application, one hundred dollars (\$100), and for investigation
5 services in connection with each additional office application, one
6 hundred dollars (\$100).

7 (d) For holding a hearing in connection with the application, as
8 set forth under Section 17209.2, the actual costs experienced in
9 each particular instance.

10 (e) (1) Each escrow agent shall pay to the commissioner for
11 the support of this division for the ensuing year an annual license
12 fee not to exceed two thousand eight hundred dollars (\$2,800) for
13 each office or location.

14 (2) On or before May 30 in each year, the commissioner shall
15 notify each escrow agent by mail of the amount of the annual
16 license fee levied against it, and that the payment of the invoice
17 is payable by the escrow agent within 30 days after receipt of
18 notification by the commissioner.

19 (3) If payment is not made within 30 days, the commissioner
20 may assess and collect a penalty, in addition to the annual license
21 fee, of 10 percent of the fee for each month or part of a month that
22 the payment is delayed or withheld.

23 (4) If an escrow agent fails to pay the amount due on or before
24 the June 30 following the day upon which payment is due, the
25 commissioner may by order summarily suspend or revoke the
26 certificate issued to the company.

27 (5) If, after an order is made pursuant to paragraph (4), a request
28 for a hearing is filed in writing and a hearing is not held within 60
29 days thereafter, the order is deemed rescinded as of its effective
30 date. During any period when its certificate is revoked or
31 suspended, a company shall not conduct business pursuant to this
32 division, except as may be permitted by order of the commissioner.
33 However, the revocation, suspension, or surrender of a certificate
34 shall not affect the powers of the commissioner as provided in this
35 division.

36 (f) Fifty dollars (\$50) for investigation services in connection
37 with each application for qualification of any person under Section
38 17200.8, other than investigation services under subdivision (c)
39 of this section.

1 (g) A fee not to exceed twenty-five dollars (\$25) for the filing
2 of a notice or report required by rules adopted pursuant to
3 subdivision (a) or Section 17203.1.

4 (h) (1) If costs and expenses associated with the enforcement
5 of this division, including overhead, are or will be incurred by the
6 commissioner during the year for which the annual license fee is
7 levied, and that will or could result in the commissioner's incurring
8 of costs and expenses, including overhead, in excess of the costs
9 and expenses, including overhead, budgeted for expenditure for
10 the year in which the annual license fee is levied, then the
11 commissioner may levy a special assessment on each escrow agent
12 for each office or location in an amount estimated to pay for the
13 actual costs and expenses associated with the enforcement of this
14 division, including overhead, in an amount not to exceed one
15 thousand dollars (\$1,000) for each office or location. The
16 commissioner shall notify each escrow agent by mail of the amount
17 of the special assessment levied against it, and that payment of the
18 special assessment is payable by the escrow agent within 60 days
19 of receipt of notification by the commissioner. The funds received
20 from the special assessment shall be deposited into the State
21 Corporations Fund and shall be used only for the purposes for
22 which the special assessment is made.

23 (2) If payment is not made within 60 days, the commissioner
24 may assess and collect a penalty, in addition to the special
25 assessment, of 10 percent of the special assessment for each month
26 or part of a month that the payment is delayed or withheld. If an
27 escrow agent fails to pay the special assessment on or before 60
28 days following the day upon which payment is due, the
29 commissioner may by order summarily suspend or revoke the
30 certificate issued to the company. If an order is made under this
31 subdivision, the provisions of paragraph (5) of subdivision (e) shall
32 apply.

33 (3) If the amount collected pursuant to this subdivision exceeds
34 the actual costs and expenses, including overhead, incurred in the
35 administration and enforcement of this division and any deficit
36 incurred, the excess shall be credited to each escrow agent on a
37 pro rata basis.

38 SEC. 2. Section 17207 of the Financial Code, as amended by
39 Section 2 of Chapter 257 of the Statutes of 2005, is repealed.

1 ~~SEC. 3.~~ Section 17405 of the Financial Code is amended to
2 read:

3 ~~17405. (a) The business, accounts and records of every person~~
4 ~~performing as an escrow agent, whether required to be licensed~~
5 ~~under this division or not, are subject to inspection and examination~~
6 ~~by the commissioner at any time without prior notice. The~~
7 ~~provisions of this section shall not apply to persons specified in~~
8 ~~Section 17006.~~

9 ~~(b) Any person subject to this division shall, upon request,~~
10 ~~exhibit and allow inspection and copying of any books and records~~
11 ~~by the commissioner or his or her authorized representative.~~

12 ~~(c) (1) The commissioner shall conduct an examination of each~~
13 ~~licensed escrow agent as described in subdivision (a) as often as~~
14 ~~the commissioner deems necessary and appropriate, but not less~~
15 ~~than once every 48 months.~~

16 ~~(2) The examination shall be conducted for the 12-month period~~
17 ~~immediately preceding the date that the examination is commenced~~
18 ~~unless the commissioner finds, based on information uncovered~~
19 ~~in the examination or in the most recent independent audit report,~~
20 ~~that the examination should be extended beyond the 12-month~~
21 ~~period.~~

22 ~~(3) In determining how often an examination shall be conducted,~~
23 ~~the commissioner may consider each licensed escrow agent's~~
24 ~~compliance with the requirements set forth in this division and~~
25 ~~other factors the commissioner may by rule or order designate.~~

26 ~~(4) This subdivision shall apply only to examinations~~
27 ~~commenced after the effective date established by the rule or order~~
28 ~~of the commissioner for the factors described in paragraph (3).~~

29 ~~(d) Notwithstanding subdivision (c), the commissioner shall~~
30 ~~conduct an indoctrination or preliminary examination, or both,~~
31 ~~under this section of any new licensee or of a change of ownership~~
32 ~~within one year of the issuance of the license under this division;~~
33 ~~and an examination described in subdivision (a) within two years~~
34 ~~of the issuance of the license or of the change of ownership under~~
35 ~~this division.~~

36 ~~SEC. 4.~~

37 ~~SEC. 3.~~ Section 17600 of the Financial Code is amended to
38 read:

39 ~~17600. (a) An escrow agent's license remains in effect until~~
40 ~~surrendered, revoked, or suspended.~~

1 (b) A licensee that ceases to engage in the business regulated
2 by this division and desires to no longer be licensed shall notify
3 the commissioner in writing and, at that time, tender the license
4 and all other indicia of licensure to the commissioner. Within 105
5 days of the written notice to the commissioner, the licensee shall
6 submit to the commissioner, at its own expense, a closing audit
7 report as of the date the license is tendered to the commissioner
8 for surrender, or for another period as the commissioner may
9 specify, to be performed by an independent certified public
10 accountant. The closing audit shall include, but not be limited to,
11 information required by the commissioner, a bank reconciliation
12 of the trust account, and a verified statement from a certified public
13 accountant confirming lawful disbursement of funds. A license is
14 not surrendered until the commissioner has reviewed and accepted
15 the closing audit report, a determination has been made by the
16 commissioner that acceptance of the surrender is in the public
17 interest, and tender of the license is accepted in writing by the
18 commissioner.